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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, December 9, 2002

APPLICATION OF

CASE NO. PUE-2002-00463

WASHINGTON GAS LIGHT COMPANY

For authority to enter into an affiliate service agreement
under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On September 11, 2002, Washington Gas Light Company (“WGL” or “Applicant”) filed an application with the State Corporation Commission (“Commission”) pursuant to Chapter 4 of Title 56 of the Code of Virginia (“Code”). WGL requests authority to enter into a service agreement (the “Systems Agreement”) whereby WGL will employ an affiliated company, Washington Gas Energy Systems, Inc. (“Systems”), to function as its general contractor and provide project management services for all energy management capital projects performed for the General Services Administration (“GSA”) of the United States government under WGL’s Areawide Public Utility Contract (the “Areawide Contract”).

WGL’s Areawide Contract, which was executed in 1996, authorizes WGL to provide gas, gas transportation, and energy management services to the GSA. Energy management services are defined as “any specific service intended to provide energy savings, efficiency improvements and/or demand reductions in [f]ederal facilities.” These services include, but are not limited to, energy audits and energy conservation measures such as lighting control and boiler control improvements, cooling tower refits, solar air preheating systems, demand side management

initiatives, fuel cell installation, and water conservation device installation. Recently, the GSA broadened the scope of the energy management portion of the Areawide Contract to include the renovation and replacement of heating and cooling systems in federal government buildings and some of the Smithsonian museums. The GSA has indicated that it wishes to sole source contract with WGL to perform these capital projects. Under federal regulations¹, only public utilities can enter into Areawide Contracts with the GSA, so WGL must be the contracting party, but WGL's intent is to assign all of the responsibility and rewards for the energy management capital projects to Systems.

Toward that end, the Systems Agreement states that Systems will act as general contractor and project manager for WGL for all energy management projects involving construction under the Areawide Contract. Further, the Systems Agreement states that WGL will receive all moneys due from federal agencies for these construction projects, but shall, upon Systems' request and the consent of the GSA, assign the receipts to Systems. The Systems Agreement also states that, as agent for Systems, WGL will arrange for payments for all subcontractors, consultants, equipment to be installed, and other expenses connected with the construction projects, but that all such expenditures will be charged to Systems. Systems will not receive a fee for its work but will be entitled to all profits and losses stemming from the construction projects.

The Systems Agreement also states that, to the fullest extent permitted by law, Systems will indemnify WGL, its directors, officers, employees, agents and servants for, and hold each of them harmless from, and against any actual or threatened harm caused by or arising out of, or resulting from the energy management services performed under

¹ 48 C.F.R. § 41.100 (2002).

the Areawide Contract by Systems, its directors, officers, employees, agents, servants, or independent contractors, unless such harm is caused entirely by the acts or inaction of WGL. WGL represents that, if the energy management construction projects are assigned to Systems, Systems' insurance (and payment and performance bonds) would cover all claims, including claims made by WGL for indemnification, to the extent that the nature of the claim is within the insurance coverage. Systems' current level of coverage for property damage and personal injury exceeds \$150 million.

WGL represents that all Areawide Contract transactions between WGL and Systems are governed by the affiliate service agreement approved by the Commission in Case No. PUA-1997-00019 (the "Service Agreement Order"). The Service Agreement Order requires WGL to charge Systems at the higher of cost or market for all services provided, and for WGL to receive services from Systems at the lower of cost or market.

NOW THE COMMISSION, upon consideration of the application and representations of Applicant and having been advised by its Staff, is of the opinion and finds that the above-described Systems Agreement is in the public interest, subject to certain conditions. Section 13.1-620 D of the Code limits WGL's activities to those related or incidental to the provision of natural gas service. As presented in the application, it appears that certain energy management services listed in the Areawide Contract, specifically the installation or renovation of solar air preheating systems, fuel cells, and water conservation devices, are not permissible in Virginia per Section 13.1-620 D. We are, therefore, of the opinion that the application should be approved subject to the conditions described below.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, Washington Gas Light Company is hereby authorized to enter into the Systems Agreement with Washington Gas Energy Services, Inc., under the terms and conditions and for the purposes described herein, subject to the following conditions. First, WGL's activities in Virginia under the Areawide Contract are to be limited to those "related or incidental to" its natural gas business per § 13.1-620 D of the Code. Second, WGL, its officers, employees, agents, and shareholders, are to be fully indemnified and held harmless, without recourse, from any (1) claims, suits, or legal proceedings; (2) damages or injuries; (3) interest; (4) costs, expenses, or fees; (5) changes in WGL's financial condition; and (6) all other loss or liability of any kind that occur as a result of the Areawide Contract.
- 2) Commission approval shall be required for any changes in terms and conditions of the Systems Agreement.
- 3) The approval granted herein shall have no ratemaking implications.
- 4) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.
- 5) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein whether or not such affiliate is regulated by this Commission.
- 6) The Staff is directed to monitor the arrangement authorized herein to ensure that it continues to be in the public interest.

- 7) WGL shall include the Systems Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission.
- 8) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then WGL shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 9) There appearing nothing further to be done in this matter, it hereby is dismissed.